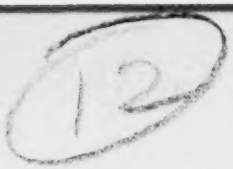

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

Number 348

■

MRS. JOHN HILLEY
Petitioner

v.

WID SPIVEY, SHERIFF
Respondent

■

Petition for Writ of Certiorari to the Court of Criminal Appeals of Texas

HAYDEN C. COVINGTON
Attorney for Petitioner

INDEX

Subject Index

Cases Cited

Cases Cited

Cases Cited

Statutes Cited

Miscellaneous Citation

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Petition for Writ of Certiorari to the Court of Criminal Appeals of Texas

To the SUPREME COURT OF THE UNITED STATES:

Mrs. John Hilley, petitioner, presents this her petition for writ of certiorari[1] and shows unto the Supreme Court of the United States as follows:

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[1] With this petition are filed two companion cases, *Daisy Largent, Petitioner,* v. *Jack Reeves, City Marshal, respondent,* and *Tully B. Killam, petitioner,* v. *City of Floresville, respondent,* brought here also from the Court of Criminal Appeals of Texas. The city ordinances under which petitioners were convicted are essentially different in their terms. The Comanche ordinance in this case is a license tax law. The Floresville ordinance prohibits and makes unlawful peddling of literature on the public square and on any street within the city, being a prohibitionary and not a regulatory ordinance, and does not provide for issuance of license or permit. The Paris ordinance in the *Largent* case is also prohibitionary, prohibiting sale of literature at all times in the main business sections of the city of Paris. There is a common question in all three companion cases, that is, the arbitrary, discriminatory denial of the writ of habeas corpus, contrary to the Fourteenth Amendment, and the common question of a fictitious and colorless non-federal question which is intermingled with the federal question. These common questions make it appropriate to consider these three cases together. It is here requested that the Court read and consider the petition filed in this case, with supporting brief, together with the petitions and supporting briefs filed in the two above named companion cases. Although different disposition may be made in each of the three cases, it would conserve time of the Court to consider the three together.

A

Summary Statement of Matters Involved

1. *Preliminary Statement.*

Although the ordinance involved in this case is the same kind as that considered in *Jones* v. *City of Opelika,* Nos. 280, 314 and 966, October Term 1941, 62 S. Ct. 1231, this case nevertheless is not controlled by said decision of this Court of June 8, 1942, because here the ordinance, by its terms, expressly provides an exorbitant and excessive license tax of $5 per day or $1,825 per year on the right of exercising the constitutional privileges of freedom of worship of Almighty God and freedom of the press. The daily contributions do not exceed 20 cents, or an annual sum of $73. The tax is unconstitutional.

An additional question is presented: The constitutional right to the writ of habeas corpus inherently secured by the due process and equal protection clauses of the Fourteenth Amendment has been abridged. Petitioner exhausted all remedies under appellate "machinery" of the state courts of Texas before applying for the writ as allowed by Texas procedure.

2. *Statutory Provision Sustaining Jurisdiction.*

Section 240(a) of the Judicial Code, 28 U. S. C. A. 347(a), sustains jurisdiction.

3. *Validity of the City Ordinance and the State Statute Drawn in Question.*

The ordinance in question is that of the City of Comanche,[2] Texas, which reads as follows:

"AN ORDINANCE

"Providing for the Regulation and Control of Vending, Displaying and Peddling of Goods, Wares, Mer-

[2] The City of Comanche is a country west-Texas town in the farming and ranching district, with a population of 3,209.

chandise and Other Articles Within the Corporate Limits of the City of Comanche, Providing a License Therefor, and Declaring an Emergency.

"Be it ordained by the City Council of the City of Comanche, Texas:

"Section 1. It shall hereafter be unlawful for any person to use the streets or alleys embraced within the corporate limits of the City of Comanche for the purpose of vending or displaying goods, wares, merchandise or other articles, or for the purpose of peddling goods, wares, merchandise or other articles, without such person first having obtained a license therefor, said license to be issued by the City of Comanche. Provided, however, that this ordinance shall not apply to any person who offers for sale, or sells, any farm products.

"Section 2. Before any person shall be permitted to use the streets or alleys within the corporate limits of the City of Comanche for the purpose of vending or displaying goods, wares, merchandise or other articles, or for the purpose of peddling goods, wares, merchandise or other articles, such person shall first obtain from the City of Comanche a license therefor, and pay for same at the rate of Five ($5.00) per day or a fraction thereof.

"Section 3. Any person violating any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding Twenty-five ($25.00) Dollars.

"Section 4. Due to the fact that the City of Comanche does not at this time have an adequate ordinance covering the vending, displaying, and peddling of goods, wares and merchandise and other articles upon the streets and alleys within its corporate limits, and that an imperative public necessity exists therefor, the constitutional rule requiring that ordinances shall be read upon three separate days is hereby suspended, and

this ordinance shall become effective immediately upon publication."

R. 4, 5.

The State statute, the validity of which is drawn in question is Article 53 of the Code of Criminal Procedure of Texas, 1925, reading as follows:

> "The Court of Criminal Appeals shall have appellate jurisdiction co-extensive with the limits of the State in all criminal cases. This article shall not be so construed as to embrace any case which has been appealed from any inferior court to the county court or county court at law, in which the fine imposed by the county court or county court at law shall not exceed one hundred dollars."

4. *Date of Judgment and Order to be Reviewed.*

The order remanding petitioner to custody was affirmed by judgment of the Court of Criminal Appeals entered on April 8, 1942. (R. 30) Petitioner duly filed her motion for rehearing on April 17, 1942, (R. 30) and judgment overruling the motion was duly entered on June 3, 1942. (R. 32) Time for filing petition for certiorari expires September 3, 1942. Petition is filed within such time.

5. *Time and Manner in which Questions Raised Below.*

At the trial de novo in the County Court by motion to quash, (R. 8-10 and 11-12) by requested charge number one, (R. 10-11) by motion for directed verdict at the close of all the evidence, (R. 20) and by specific allegations in the application for writ of habeas corpus filed in the District Court, petitioner attacked the ordinance in question as being in violation of the First and Fourteenth Amendments to the United States Constitution, because by its terms and as construed and applied, petitioner was denied her rights of freedom of press and worship of Almighty God.

All these various contentions were overruled by the

County and District Courts to which petitioner excepted.

When the application for writ of habeas corpus was heard in the District Court at Comanche, no question was raised as to the right to the writ of habeas corpus. That right to writ was admitted in the trial court. Writ was discharged because trial court believed the ordinance to be constitutional and not on ground that writ was not proper remedy. Under the decisions of the Court of Criminal Appeals, the writ of habeas corpus was the appropriate remedy to secure the release of one illegally restrained of his liberty in violation of the Constitution. In the Court of Criminal Appeals on appeal petitioner took the position that habeas corpus was the proper remedy to secure her release and that the Court of Criminal Appeals had the power of review because the ordinance was unconstitutional on its face and as construed and applied. (R. 27-28) The majority opinion of the Court of Criminal Appeals, over the protest of the minority opinion, for the first time in these proceedings raised the contention that Article 53 (C. C. P. of Texas) deprived the Court of Criminal Appeals, in cases such as this, of its appellate jurisdiction in habeas corpus cases conferred upon it by Article 857 (C. C. P. of Texas). R. 29.

Under grounds 3 and 5 of the motion for rehearing filed in Court of Criminal Appeals,[3] petitioner attacked the validity of Article 53 (C. C. P. of Texas) as construed and applied by the Court of Criminal Appeals on the ground that it violated the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, in denying the writ of habeas corpus, an inherent right guaranteed by the Fourteenth Amendment. The Court of Criminal Appeals admits that it has the duty to take jurisdiction or appellate jurisdiction in habeas corpus cases where one is convicted under an ordinance found to be un-

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[3] This was timely because the Court of Criminal Appeals urged the point for the first time in the majority opinion on April 4, 1942. See *Brinkerhoff* case, infra, page 30, this brief.

constitutional on its face. That court for the first time held that the power did not exist if ordinance was unconstitutional as applied, and affirmed on this ground. The action of the Court of Criminal Appeals is a subterfuge to deny petitioner her constitutional rights of freedom of press and of worship of Almighty God. R. 29.

6. *Opinions of the Courts Below.*

The trial courts did not render or file opinions. The Court of Criminal Appeals' opinion, and dissenting opinion of Judge Graves, is reported in 162 S. W. 2d 428 (R. 29) The majority opinion and dissenting opinion in the companion case of *Ex parte Largent* is reported in 162 S. W. 2d 419. See Largent Record, pages 24 to 35.

7. *Statement of Facts.*

In the Corporation Court of the City of Comanche, petitioner was charged by complaint with an alleged violation of the aforesaid ordinance on March 17, 1941, in which she did offer and display for sale booklets and pamphlets without having a license permit issued by the City of Comanche as required by said ordinance. (R. 5 and 12-13) On a trial petitioner was convicted in the Corporation Court, recorder's court for the City of Comanche, and duly appealed to the County Court of Comanche County in the time and manner required by the Code of Criminal Procedure of Texas. In the County Court there was a trial de novo before the judge and to a jury, who received evidence. (R. 6) There was no material dispute in the testimony of the witnesses for the State and the defense. The evidence showed that the petitioner was an ordained minister of Jehovah God, preaching the Gospel of God's Kingdom publicly upon the streets of the City of Comanche by means of distribution of literature explaining Bible prophecy, which she distributed to passers-by on the sidewalk offering to receive money contributions, sometimes receiving money contributions and other times the literature was distributed free. This was her way of worshiping Almighty God. The work she was

doing was for the purpose of aiding people of good-will and to "feed the Lord's other sheep". She had been innstructed by the local police to stay off the streets with the Bible literature but she refused to do so. This refusal was not because she desired to flout the law, but was because she desired to obey Almighty God. The *Watchtower* magazine which she was distributing was offered in evidence and portions thereof read to the jury.

The Watchtower is published for the purpose of enabling the people to know Jehovah God and His purposes as expressed in the Bible. It publishes Bible instruction specifically designed to aid Jehovah's witnesses and all people of good-will. It arranges systematic Bible study for its readers, and the Watch Tower Bible and Tract Society, its publishers, supplies other literature to aid in such studies. It publishes suitable material for radio broadcasting and for other means of public instruction in the Scriptures. *The Watchtower* strictly adheres to the Bible as authority for its utterances, being strictly free and separate from all religion, parties, sects or other worldly organizations. It is wholly and without reservation for the kingdom of Jehovah God under Christ His beloved King. It is not dogmatic, but invites careful and critical examination of its contents in the light of the Scriptures. It does not indulge in controversy, and its columns are not open to personalities. *The Watchtower* advocates that Jehovah God is the only true God, Maker of heaven and earth, and the Giver of life to His creatures; that God created the earth for man, originally made perfect, and placed man upon it; that man willfully disobeyed God's law and was sentenced to death, and by reason thereof, death came upon all the descendants of the first man, Adam; that Jesus Christ was made human through the miraculous conception and birth and suffered death in order to provide a redemptive price, for those only of mankind who desire to serve Jehovah God and live; that Jesus Christ was thereafter raised unto heaven and placed at the right hand of Jehovah God, his Father, to be the King

of Jehovah's everlasting government, The THEOCRACY, and thereafter proceeded to oust the adversary Satan and his legion of wicked angels from heaven; that Satan is now attempting to turn all mankind away from God and into destruction and to violently oppose and destroy those who dare to act as witnesses for Jehovah God, his Word, and his Kingdom, as did Christ Jesus when he was on earth; that Christ Jesus is the great Executioner of the Supreme Judge and is now proceeding to execute judgment of everlasting destruction upon Satan's governments and all supporters thereof, invisible and visible in the earth, at Armageddon, which is very near, following which there will be established completely and fully in the earth the righteous government for which Christ Jesus taught all true servants of Jehovah to pray.

An examination of the *Watchtower* magazine conclusively proves, therefore, that its pages from cover to cover contain a written sermon explaining the foregoing matters in greater detail.

The Watchtower contains a notice that persons who by reason of infirmity, poverty or adversity are unable to contribute or pay the annual subscription fee may obtain the same free and without charge. See inside cover of *The Watchtower.*

The jury returned a verdict finding the petitioner guilty and assessing a fine. Thereupon the County Court rendered a judgment assessing a fine in the amount of $15 and costs. (R. 6) Warrant and capias profine was issued on judgment. R. 7.

Under the law of Texas, when one is convicted in the justice of the peace, corporation, or recorder's court, of a city, he may appeal to the County Court, a court of original jurisdiction. Upon such appeal a trial de novo is had. If the fine assessed in the County Court does not exceed $100 the right of further appeal to the Court of Criminal Appeals is denied by statute. (Article 53, C. C. P. of Texas)

Under the sections of the Code of Criminal Procedure

relating to habeas corpus, a rule and FUNDAMENTAL RIGHT of procedure has been adopted whereby any individual thus convicted in the County Court and who has no right of further statutory appeal when not fined in an amount in excess of $100, may apply, by petition for writ of habeas corpus, to the County Court, the District Court, or the Court of Criminal Appeals, or any judge thereof, to procure his release from said judgment of conviction, and may be discharged if it is alleged and proved that he is illegally restrained of his liberty in violation of the Constitution. The Constitution of Texas confers upon the Court of Criminal Appeals in such habeas corpus cases unrestrained and unlimited appellate jurisdiction to review the judgment entered in said habeas corpus proceedings.

Judge Lockridge of the Comanche County Court signed a certificate that he would deny an application for writ of habeas corpus if presented to him. R. 21.

Petitioner duly presented to the judge of the District Court of Comanche County, a court of general original jurisdiction, her application for writ of habeas corpus in which she alleged that by reason of the foregoing facts she was illegally restrained of her liberty and further expressly alleged that the ordinance in question was in direct violation of the Texas Constitution and the First and Fourteenth Amendments to the United States Constitution. To this application for writ of habeas corpus presented to the district judge was attached a copy of the ordinance, a complete report of the proceedings with all exhibits and the judgments of conviction entered by the County Court. R. 1-27.

A hearing was had before the judge of the District Court on June 28, 1941, at which evidence was received, consisting of the papers and exhibits attached to the application for writ of habeas corpus. (R. 23-25, 26) At the conclusion of the hearing, the District Judge entered an order remanding petitioner to the custody of the respondent, Wid Spivey, to which action petitioner excepted and duly gave notice of appeal to the Court of Criminal Appeals and pending said appeal,

petitioner was released on bond duly filed and approved. (R. 23-24) Transcript of the habeas corpus proceedings before the District Judge was duly approved and filed and appeal perfected to the Court of Criminal Appeals. R. 1-27.

On November 17, 1941, petitioner's appeal was argued before the Court of Criminal Appeals, together with three companion cases involving Jehovah's witnesses appealed to said Court in habeas corpus proceedings from the County Courts of Kerr, Comanche, Wilson and Lamar counties. The appeal in one of the companion cases styled *Ex parte J. D. Carter* (156 S. W. 2d 986) from Kerr County Court, was reversed, the writ of habeas corpus granted, and the relator J. D. Carter, fined less than $100.00, was discharged, because the State statute under which he had been convicted was found to be unconstitutional on its face.

On April 4, 1942, two of the remaining companion cases, together with the case involved in this petition, were affirmed.

While the subterfuge holding of the Court of Criminal Appeals that the writ of habeas corpus is not available to petitioners in those cases is the same as the holding in that regard in this case, yet those cases present ordinances of a different type from that involved here, under which said petitioners were convicted, it is considered appropriate that said cases likewise be presented to this Court as companion petitions with this petition for writ of certiorari.

The Court of Criminal Appeals' disposition of the questions presented in this case is not based on an independent, non-federal ground, but the action of such court is a manifest subterfuge to avoid the decision of the federal question and to add to the wrong done by denial of petitioner's rights. The majority opinion of the Court of Criminal Appeals intermingles the purported non-federal question with the federal question to such an extent that it is dependent entirely upon the disposition of the federal question involved as to make necessary a review by this Court.

That court holds that if the ordinance is unconstitutional

on its face, then it has jurisdiction to consider and determine the question. That court found the ordinance to be valid on its face under the federal constitution. This makes necessary a review of the *so-called* "non-federal" question.

B

Questions Presented

By reason of the foregoing, there were seasonably presented to the courts below and there now are presented to this Court for review substantial federal questions as follows:

1. Is the ordinance in question unconstitutional and void on its face and as construed and applied to petitioner because it unduly abridges and burdens, by excessive $1,825 annual license tax, her rights of freedoms of speech, press and worship of Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution?

2. Does Article 53 of the Code of Criminal Procedure of Texas, 1925, as construed and applied by the Court of Criminal Appeals of Texas, unduly deny petitioner of her right to the inalienable and inherent writ of habeas corpus in violation of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution?

3. Did the Court of Criminal Appeals of Texas err in affirming the judgment of the trial court, remanding petitioner to custody of respondent?

C

Reasons Relied on for Allowance of Writ

This petition for writ of certiorari should be granted in sound discretion of this Court because the trial court and the Court of Criminal Appeals of Texas have decided contrary to applicable decisions of this Court an important question of constitutional law, i.e., the validity of the license

tax law, containing an excessive burden upon freedom of press and freedom of worship by the illegal imposition of a $5 daily license tax for the exercise of said constitutional rights, which amounts to $1,825 per year.

Furthermore, the Court should take jurisdiction and grant the writ because the validity of a license tax in any sum has not yet been finally determined by this Court. At the present time there is pending a motion for rehearing in the case of *Jones* v. *City of Opelika* (Nos. 280, 314 and 966, October Term 1941), 62 S. Ct. 1231, and it is hoped that such motion will be granted. If not, this Court should grant the writ here because the Court can take judicial notice, without any detailed auditor's and referee's report, that the Comanche license tax is exorbitant and unreasonably excessive in amount when applied to persons who pamphleteer for charitable, political or "religious" purposes. In holding the ordinance valid as construed and applied, the Court of Criminal Appeals and the trial court decided contrary to previous decisions of this Court.[4]

In each of the above cases the identical type of license law was knocked down because a direct burden on the guaranteed constitutional right was there involved. These cases cannot be distinguished from the case at bar and are controlling authority here. Read *Di Santo* v. *Pennsylvania*, 273 U. S. 34, 39, where this Court held that this type of law is "likely to be used as an instrument of discrimination".

The decision is also in direct conflict with other cases.[5]

We adopt the dissenting opinion of Judge Graves of the

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[4] See *Robbins* v. *Shelby County Taxing Dist.*, 120 U. S. 489, 494-496; *Caldwell* v. *North Carolina*, 187 U. S. 622, 624-632; *Rearick* v. *Pennsylvania*, 303 U. S. 507, 510-513; *Dozier* v. *Alabama*, 218 U. S. 124, 126-128; *Real Silk Hosiery Mills* v. *City of Portland*, 268 U. S. 325, 335-336; *Davis* v. *Virginia*, 236 U. S. 697; *Stewart* v. *Michigan*, 232 U. S. 655; *Rogers* v. *Arkansas*, 227 U. S. 401; *Crenshaw* v. *Arkansas*, 227 U. S. 389.

[5] *Blue Island* v. *Kozul*, 371 Ill. 511, 41 N. E. 2d 515; *McConkey* v. *City of Fredericksburg*, 179 Va. 556, 19 S. E. 2d 682; *State* v. *Greaves*, 112 Vt. 222, 22 A. 2d 497; *South Holland* v. *Stein*, 373 Ill. 472, 26 N. E. 2d 868; *Lovell* v. *City of Griffin*, 303 U. S. 444, *Schneider* v. *State*, 308 U. S. 147; and *Cantwell* v. *Connecticut*, 310 U. S. 296.

Court of Criminal Appeals of Texas, as part of our reasons why the writ should be allowed. Largent R. p. 28.

It cannot be successfully contended that the Court of Criminal Appeals based its decision on an adequate and independent non-federal ground, for the action of that court is a colorless and deliberate effort to suppress petitioner's constitutional rights of freedom of press and of worship by avoiding a discussion of the validity of the ordinance on its face and as construed and applied by the city of Comanche, Texas. In circumstances indentical with the case at bar, the writ of habeas corpus is held to be the only remedy and the proper remedy for one convicted on a trial de novo in the County Court for an alleged violation of a city ordinance where the fine does not exceed $100 and who is illegally restrained of his liberty in violation of the Constitution.[6]

The holding of the Court of Criminal Appeals that the writ of habeas corpus is not available is also directly in conflict with *Smith* v. *O'Grady*, 312 U. S. 329.[7]

See also dissenting opinion of Judge Graves of the Court of Criminal Appeals in the case at bar, and the opinion of Judge Beauchamp of the Court of Criminal Appeals in the companion *Killam* case, on Rehearing.

The Court of Criminal Appeals in its construction of Article 53 of the Code of Criminal Procedure, has violated the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution, in that it affords its appellate jurisdiction in habeas corpus cases to persons illegally restrained of their liberty if or-

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[6] *Ex parte Roquemore*, 131 S. W. 1101; *Ex Parte Degener*, 17 S. W. 1111, 1115; *Ex parte Meador*, 248 S. W. 348; *Ex parte Jarvis*, 3 S. W. 2d 84; *Ex parte Slawson*, 141 S. W. 2d 609, 610; *Ex parte Spelce*, 119 S. W. 2d 1033, 1037; *Ex parte Jones*, 81 S. W. 2d 706; *Ex parte McCormick*, 81 S. W. 2d 104; *Ex parte Foster*, 71 S. W. 2d 593, 595; *Ex parte Patterson*, 42 Tex. C. R. 256, 58 S. W. 1011; *Ex parte Baker*, 78 S. W. 2d 610.

[7] See also *Mooney* v. *Holohan*, 294 U. S. 104, 113; *Moore* v. *Dempsey*, 261 U. S. 86, 90; *Robert* v. *Connally*, 111 U. S. 624, 637; *Yick Wo* v. *Hopkins*, 118 U. S. 356, 373-374; *Ex parte Calhoun*, 91 S. W. 2d 1047; *Cochran* v. *State of Kansas*, No. 510 Oct. Term 1941 (May 11, 1942) 62 S. Ct. 1068; *McCormick* v. *Sheppard*, 86 S. W. 2d 213; *Herndon* v. *Lowry*, 201 U. S. 242.

dinance void on its face and discriminates against individuals convicted under similar circumstances under an ordinance unconstitutional as construed and applied. This very charge of discrimination is proved in these four cases involving Jehovah's witnesses argued jointly before the Court of Criminal Appeals on November 17, 1941. In the case of *Ex parte Carter,* supra, the Court of Criminal Appeals discharged Carter, one of Jehovah's witnesses convicted on trial de novo in County Court under circumstances identical with the case at bar. Furthermore after the cases were argued, that court, in another case styled *Ex parte Faulkner,* 158 S. W. 2d 525, entertained an appeal in habeas corpus case identical with the case at bar.

See also the case of *Ex parte Lewis,* 147 S. W. 2d 478. There the Court of Criminal Appeals took jurisdiction, and discussed the merits of the case, although they found the ordinance valid on its face. At no time did they question the jurisdiction of the court even though the fine on trial de novo in the County Court did not exceed $100. See also the case of *Ex parte Lewis,* 45 Tex. C. R. 1, 73 S. W. 811.

It is therefore manifest that the Court of Criminal Appeals of Texas arbitrarily and evasively considered the federal questions presented and the refusal of that court to take jurisdiction is itself a denial of due process and is not an adequate non-federal question to support the judgment of the Court of Criminal Appeals. See the cases.[8]

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[8] *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill,* 281 U. S. 673, 678-682; *People of N. Y. ex rel. Bryant* v. *Zimmerman,* 278 U. S. 63, 70-71; *Rogers* v. *Alabama,* 192 U. S. 226, 230-231 (Motion to quash struck because prolix and verbose); *Davis* v. *Wechsler,* 263 U. S. 22, 24 (Waiver of venue by appearance); *Love* v. *Griffith,* 266 U. S. 32 (Appeal dismissed because moot question); *N. Y. C. Ry. Co.* v. *N. Y. & Pa. Co.,* 271 U. S. 124, 126-127 (Federal question not waived because of failure to appeal from former ruling); *German Savings & Loan Soc.* v. *Dormitzer,* 192 U. S. 125, 128 (Estoppel not sufficient); *Postal T. & C. Co.* v. *Newport,* 247 U. S. 464, 473, 475-476 (Res adjudicata, estoppel and waiver through agreement); *Brown* v. *Mississippi,* 297 U. S. 278 (Failure to move to exclude evidence); *Patterson* v. *Alabama,* 294 U. S. 600, 603-607, (Striking of motion for new trial and the bill of exceptions containing evidence); *Lawrence* v. *State Tax Com.,* 286 U. S. 276, 282-283.

Whether or not the federal question is properly brought before the Court of Criminal Appeals for determination by that court, it is a federal question. *Lovell* v. *City of Griffin,* 303 U. S. 444, 454-455.

An analysis of the above decisions indicates that the non-federal ground must be broad enough to sustain a judgment and that it must be independent and not so interwoven with the federal question as to be incapable of separate treatment and determination. A non-federal ground which is plainly untenable will not defeat review by this Court.

Furthermore, the *so-called* non-federal question is itself a federal question in this, that the writ of habeas corpus specifically guaranteed by the Federal and State constitutions has been denied the petitioner in violation of the due process and equal protection clauses of the Fourteenth Amendment. The writ of habeas corpus is unquestionably one of the fundamental, inalienable rights of the citizen. *Slaughter House Cases,* 16 Wall. 36, 79; *Corfield* v. *Coryell,* 4 Wash. (U. S.) 371, 380. Mr. Justice Roberts approved for this Court the *Slaughter House Cases,* in his opinion in *Hague* v. *C. I. O.,* 307 U. S. 496, mentioning habeas corpus as one of the rights of the citizen granted by the Federal Constitution.

If the "non-federal" subterfuge of the Court of Criminal Appeals of Texas is sustained, direct appeals from all of the county courts of Texas to this Court become necessary in circumstances such as these. The holding of the Court of Criminal Appeals makes this Court the only court to which Jehovah's witnesses can appeal. There are 250 county courts in Texas. Now hundreds of Jehovah's witnesses are appealing from their great distresses in Texas in the recorder, justice and corporation courts, of that state, to the County Courts in the great state. Should adverse decisions result in those cases, will the Supreme Court of the United States be the only court to which they can appeal?

Will this Court advise the Court of Criminal Appeals of Texas as follows?—

> "Upon the state courts equally with the courts of the Union rests the obligation to guard and enforce every right secured by that Constitution.[9] In view of the dominant requirement of the Fourteenth Amendment we are not at liberty to assume that the State has denied to its courts jurisdiction to redress the prohibited wrong upon a proper showing and in an appropriate proceeding for that purpose." (*Mooney* v. *Holohan,* 294 U. S. 103, 113.)

The questions presented as to the validity of the ordinance in question and the right to the writ of habeas corpus are of national importance and seriously affect the fundamental civil and personal rights of every person within the United States. The Court of Criminal Appeals of Texas has so far departed from the accepted and usual course of judicial procedure and decided an important federal question in conflict with prior decisions of this court in an arbitrary and evasive manner as to call for the exercise of this Court's power of supervision to halt the same.

As our further reasons why this petition for writ of certiorari should be granted we refer to the entire dissenting opinion of Judge Graves of the Court of Criminal Appeals in the companion *Largent* case, and make the same a part hereof as though copied at length herein. (R. 29) See also the Record in the *Largent* petition for certiorari, pages 28-35.

WHEREFORE your petitioner prays that this Court issue a writ of certiorari to the Court of Criminal Appeals of Texas, directing such court to certify to this Court for review and determination on a day certain to be therein named, a full and complete transscript of the record and all proceedings in the case as numbered and entitled on the

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[9] *Robert* v. *Connally,* 111 U. S. 624, 637.

docket of said court; and that the decree of the said court affirming the judgment of the trial court be reversed and the judgments of the trial court be reversed and that your petitioner may have such other and further relief in the premises as to this Court may seem just and proper under the circumstances.

MRS. JOHN HILLEY
Petitioner

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